

No. 12069

United States
Court of Appeals
for the Ninth Circuit

F. K. DENT,

Appellant,

VS.

ALASKA PLACER COMPANY,

Appellee.

Transcript of Record

Appeal from the District Court for the Territory of Alaska,
Second Division

FILED

JAN 24 1949

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

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CHARLES J. CLASBY,

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In the District Court for the Territory of Alaska,
Second Division.

No. 3781

F. K. DENT,

Plaintiff,

vs.

ALASKA PLACER COMPANY,
a Corporation,

Defendant.

COMPLAINT

Comes Now plaintiff above-named and for his cause of action against the defendant above-named, alleges as follows:

I.

That the defendant is a domestic corporation, organized and existing under the laws of the Territory of Alaska, with its principal office in the Town of Nome, Alaska.

II.

That the plaintiff is now, and for more than six years last past has been, the owner in fee as to all persons, save and except the United States of America, and has been and is now entitled to the sole and exclusive possession of those certain placer mining claims known and described as follows:

(a) The Glass Fraction placer mining claim, containing twenty (20) acres, or less, situate on and across the Niukluk River in the Cape Nome Mining and Recording Precinct, Second Division, Territory of Alaska, just below the Town of Council,

and adjoining the up-stream end of the Magnium Bonus Association placer mining claim, bounded and described as follows:

Commencing at the Initial Stake, thence 850 feet up-stream, thence 600 feet across stream, thence 900 feet [1 *] downstream, thence 650 feet across stream to place of beginning.

(b) The Magnium Bonus Association placer mining claim, containing forty (40) acres, or less, situate on and across the Niukluk River in the Cape Nome Mining and Recording Precinct, Second Division, Territory of Alaska, just below the confluence of Melsing Creek with said River, bounded as described as follows:

Commencing at the Initial Stake set about 800 feet below the confluence of Melsing Creek and Niukluk River, thence downstream on the Niukluk River 1320 feet to a post; thence across the river 1320 feet to a post; thence upstream 1320 feet to a post; thence across said river 1320 feet to the place of beginning.

(c) The Rainbow Association placer mining claim containing forty (40) acres, or less, situate on and across the Niukluk River in the Cape Nome Mining and Recording Precinct, Second Division, Territory of Alaska, just below the confluence of Melsing Creek with said River, bounded and described as follows:

Commencing at the initial stake set at the downstream Left Limit corner of the Magnium Bonus Association placer mining claim, thence

* Page numbering appearing at foot of page of original certified Transcript of Record.

downstream 1320 feet to a post; thence across the River valley 1320 feet to a post; thence upstream 1320 feet to a post; thence across the valley 1320 feet to the initial stake.

(d) The H & H Association placer mining claim containing forty (40) acres, or less, situate on and across the Niukluk River in the Cape Nome Mining and Recording Precinct, Second Division, Territory of Alaska, below the confluence of Melsing Creek with said River, bounded and described as follows:

Commencing at the initial stake set at the Left Limit downstream corner of the Rainbow Association placer mining claim, thence downstream 1320 feet to a post; thence across the stream 1320 feet to a post; thence upstream 1320 feet to a post; thence across stream 1320 feet to the initial stake.

(e) The S & S Association placer mining claim containing forty (40) acres, or less, situate on and across the Niukluk River in the Cape Nome Mining and Recording Precinct, Second Division, Territory of Alaska, below the confluence of Melsing Creek with said River, [2] bounded and described as follows:

Commencing at the initial stake set at the Left Limit downstream corner of the H & H Association placer mining claim, thence downstream 1320 feet to a post: thence across the stream 1320 feet to a post, thence upstream 1320 feet to a post, thence across the stream 1320 feet to the initial stake.

(f) The Surprise Association placer mining claim, containing forty (40) acres, or less, situate on the Right Limit of the Niukluk River in the Cape Nome Mining and Recording Precinct, Second Division, Territory of Alaska, about one mile below the confluence of Melsing Creek and said River, bounded and described as follows:

Commencing with the initial stake set at Corner No. 3, L and A Claim, U. S. Mineral Survey No. 1152, (being the northwest corner of this claim); thence in an easterly direction 500 feet to a corner, not set, in the Niukluk River; thence in a southerly direction (downstream), 3480 feet to a corner, not set, in the Niukluk River; thence in a westerly direction 500 feet to a post; thence in a northerly direction (upstream) 3480 feet to the initial stake, specifically including the right to the exclusive possession of all of the bed of the Niukluk River within the end lines of said claims for the purpose of prospecting and mining the same.

III.

That said defendants, on or about the 15th day of September, 1947, ousted and ejected plaintiff from said placer mining claims and now do wrongfully and unlawfully withhold the same, and the whole thereof, from plaintiff to its damage as hereinafter stated.

IV.

That said placer claims above described are chiefly valuable for the placer gold and other min-

erals therein contained, and that, during the balance of the open mining season in 1947 and during the mining season of 1948 until the date of this Complaint said defendants, without right or authority, unlawfully entered thereon and excavated the same and conducted mining and dredging operations thereon, and extracted and removed therefrom placer gold and other minerals of the value of One Hundred Twenty Thousand (\$120,000.00) Dollars, and thereby depleted the estate of plaintiff in the premises to the value of [3] One Hundred Twenty Thousand (\$120,000.00) Dollars, and plaintiff thereby sustained damages in the amount of One Hundred Twenty Thousand (\$120,000.00) Dollars. That the removal of minerals, depletion of said estate and consequent damage to plaintiff will be continued by defendant, as plaintiff is informed and believes.

V.

That the acts of defendant, and each of them in withholding from plaintiff the said placer mining claims and in depleting the estate of this plaintiff therein were committed maliciously and in bad faith and in wanton disregard of the rights of this plaintiff in and to said placer mining claims, and the whole thereof, and said plaintiff should be awarded such sum as punitive damages as the said Court may allow.

VI.

That plaintiff herein has been obligated to and has employed the services of an attorney for the purpose of prosecuting this action, the reasonable value of whose services in the sum of Fifteen

Thousand (\$15,000.00) Dollars, as near as can be estimated upon the signing of this complaint.

Wherefore plaintiff prays for the entry herein of judgment as follows:

(a) To the effect that plaintiff was at all times hereinabove mentioned and now is, the owner and entitled to the sole and exclusive possession of said Glass Fraction, Magnium Bonus Association, Rainbow Association, H and H Association, S and S Association and Surprise Association placer mining claims hereinabove described as being wrongfully withheld by said defendant, and that his estate therein is fee as to uplands and the exclusive possession for prospecting and mining as to the bed of the Niukluk River as against all persons save and except the United States of America; [4]

(b) That the plaintiff is entitled to recover from the defendant the sum of One Hundred Twenty Thousand (\$120,000.00) Dollars, damages for the wrongful withholding and actual depletion of the value of said mining claims hereinabove described, with such additional damages thereto as shall occur after the date of this complaint, and for such further sum as may be by the Court allowed as punitive damages;

(c) And for the recovery of his costs and disbursements in this action incurred, including a reasonable attorney's fee to be set by the Court.

COLLINS & CLASBY,

By /s/ CHAS. J. CLASBY,

Attorneys for Plaintiff.

(Duly Verified.)

[Endorsed]: Filed Aug. 12, 1948.

[5]

[Title of District Court and Cause.]

APPLICATION FOR INJUNCTION
PENDENTE LITE

Comes now plaintiff above named and respectfully moves the Court for the entry herein of an order requiring defendant to appear before the Court at a time and place certain, and then and there show cause, if any it has, why it should not be enjoined during the pendency of this action from mining and extracting minerals from the mining claim of plaintiff described in the Complaint on file herein; and that upon such hearing that defendant be so enjoined.

This application is based upon the verified complaint of plaintiff now on file in this cause and his affidavit hereto attached.

COLLINS & CLASBY,
By /s/ CHAS. J. CLASBY,
Attorneys for Plaintiff.

[Endorsed]: Filed Aug. 12, 1948.

[6]

[Title of District Court and Cause.]

AFFIDAVIT IN SUPPORT OF INJUNCTION
PENDENTE LITE

F. K. Dent, being first duly sworn, on his oath deposes and says:

That I am the plaintiff in the above entitled action and make this affidavit in support of my motion for the entry herein of an injunction, pendente lite.

That all of the mining claims described in plaintiff's Complaint were staked in November of 1933, excepting the Glass Fraction in March of 1936 and the Surprise Association in May of 1938. That since location, these claims have been held openly, notoriously and adversely to all, except the United States, by plaintiff and his predecessors, including the predecessors in interest of the properties of defendant, they being also the stockholders of defendant, who at one time held these identical claims under lease.

That each of the mining claims described in the Complaint contain valuable mineral deposits. That the lands, and river bed, embraced within the boundaries of these claims have been held by divers persons under various locations thereof since the early days of mining in the Nuikluk River, and were dealt with, and now are dealt with, as conferring on the owner, or locator valuable possessory rights. [7]

That on or about the 15th day of September, 1947, without right or authority, defendant, its agents and employees, entered upon said mining claims, over and against written objection by plaintiff, with a dredge. That defendant thereafter, during the open mining season of 1947, and during the mining season of 1948 to date, dredged and mined the grounds of said mining claims with one dredge swing through the Magnum Bonus Association, Rainbow Association, H & H Association, S & S Association, and into the Surprise Association, and extracted gold therefrom in great quantity, all

along the heavy pay streak, well known to the officers and stockholders of defendants through drill logs of these claims that came into their possession when they were lessees thereof. That the drill reports show large quantities of the ground mined by defendant to have contained in excess of \$2.00 per yard. Affiant is informed and believes, and therefore states, that defendant has recovered in excess of \$1500.00 a day in gold extracted from said claims, and that it mined said claims approximately twenty days in 1947 and has mined said claims approximately sixty days in the year 1948.

That plaintiff has filed in this cause an ejectment action, seeking recovery of said mining properties and damages for their detention by defendant. That the defendant is continuing, and unless restrained, will continue to mine these and other properties of plaintiff, and that defendant has and will continue to gut said properties by mining the very heart thereof, wasting the economic dredging limits thereof and rendering the balance of minable limits of said claims severely depreciated, damaged and unminable by reason thereof. That the estate of plaintiff will be irreparably damaged if defendants be not restrained from further trespass and mining thereof.

That the defendant received assets, valued at \$44,593.14 as of December 31, 1944, as shown by its financial statement on file in the office of the Clerk of this Court, for which it issued \$50,000.00 in par [8] value of its capital stock. That as of December 31, 1944, defendant was indebted in the

sum of \$20,439.62. That on December 31, 1947, according to its financial statement on file with the Clerk of this Court, and after it had extracted in excess of \$30,000.00 in gold from the claims of plaintiff, defendant only had assets of \$49,221.42 against which it acknowledged indebtedness of \$56,613.25. That defendant, by its financial statement, was insolvent on December 31, 1947; and affiant believes that this corporation is so closely held and owned by its directors and officers, and so manipulated as to salaries to stockholders and expenses of operations that it is now and will continue to be insolvent, or so nearly so, as to render any recovery of damages in this cause by plaintiff unrecoverable and ineffectual as any remedy for the loss to plaintiff. Affiant believes, and the facts above stated indicate, that the value of the gold extracted from the claims of plaintiff by defendant is, and will continue to be, diverted into the personal possession of its officers and stockholders and beyond the reach of plaintiff by judgment for damages, thus rendering his remedy at law ineffectual.

Further affiant sayeth not.

/s/ F. K. DENT.

Subscribed and Sworn to before me this 12th day of August, 1948.

(Seal) /s/ NORVIN W. LEWIS,
Clerk of the U. S. District Court, Second Division,
Territory of Alaska.

[Title of District Court and Cause.]

ORDER TO SHOW CAUSE

This matter having come on for hearing this day upon plaintiff's application for an injunction pendente lite on file herein, and the Court having read said application, the affidavit in support thereof, and the Complaint on file herein, and finding therefrom that plaintiff is entitled to the relief therein demanded, and that such relief consists in recovering the possession of real property of which defendant is in possession and is committing acts which, if permitted during the pendency of this action, would cause injury to plaintiff,

Now Therefore, It Is Hereby Ordered that the defendant appear before the above entitled Court in its courtroom on the first floor of the Federal Building in the Town of Nome, Alaska, on the 25th day of August, 1948, at the hour of 2 o'clock in the afternoon of said day, and then and there show cause, if any it have, why this Court should not, pending final determination of this cause, enter in this proceeding an order restraining and enjoining defendant from mining and extracting minerals from those placer mining claims situate on the Nuikluk River in the Cape Nome Mining and Recording Precinct, Second Division, Territory of Alaska, known as the Glass Fraction, Magnum Bonus Association, Rainbow Association, H & H Association, S & S Association and Surprise Association, according to the locations [10] thereof, they being located successively as named, down-

stream on said Nuikluk River, commencing with its confluence with Melsing Creek, a tributary of said Nuikluk River.

It Is Further Ordered that a certified copy of this Order and of the Application for Injunction Pendente Lite and the Affidavit of F. K. Dent in support thereof be forthwith served upon the defendant.

Done at Nome, Alaska, this 12th day of August, 1948.

/s/ JOSEPH W. KEHOE,
District Judge.

[Endorsed]: Filed Aug. 12, 1948.

[11]

[Title of District Court and Cause.]

ANSWER

Comes now the defendant and in answer to plaintiff's complaint admits, denies and alleges as follows:

I.

In answer to Section I of plaintiff's complaint, defendant admits the allegations therein and affirmably alleges that said defendant has paid unto the Territory of Alaska its annual corporation tax last due and has complied with all Territorial Laws prerequisite to a defense of this action.

II.

In answer to Section II of plaintiff's complaint, defendant denies each and every allegation therein

contained except for the general location of the purported mining claims therein named, and as to this, defendant admits that said purported mining claims extend over, across and along the Niukluk River, beginning "just below the confluence of Melsing Creek with said river," in the Cape Nome Precinct, Second Division, Territory of Alaska.

III.

Answering Section III of plaintiff's complaint, defendant denies each and every allegation therein contained.

IV.

Answering Section IV of plaintiff's complaint, defendant admits that during the latter part of the open placer mining season of 1947 it floated its dredge over the navigable waters of the Niukluk River from a short distance above Melsing Creek to a point on patented mining claim L and A Bench, U.S.M.S. 1152, held by defendant under lease and which is located on the right limit of the Niukluk River, to a point about two-thirds of the distance between Melsing Creek and Bear Creek, and that during the open placer mining season of 1948 to date, it has conducted mining operations in the bed of the Niukluk River below the confluence of Melsing Creek with the said river and between points U.S.L.M. No. 1152, lat. $64^{\circ} 53''$ N., long $163^{\circ} 40''$ W. and a point downstream where Bear Creek enters into the said river, and that all such operations have been carried on and conducted in accordance with Federal law and United States

Government permission granted thereunder, all of which being more fully set forth and affirmably alleged hereinafter: That except as modified herein, defendant denies each and every allegation contained in Section IV of plaintiff's complaint. [12]

V.

Answering Section V of plaintiff's complaint, defendant denies each and every allegation therein contained.

VI.

Answering Section VI of plaintiff's complaint, defendant denies each and every allegation therein contained.

For a first, further and separate answer and defense to the complaint of plaintiff, defendant alleges:

A. That in Civil Action No. 3473, this Court, titled, "United States of America, plaintiff vs. Joseph E. Lucas, et al, defendants," a written judgment and decree was rendered the 29th day of September, 1941, and filed in this said Court and cause the 30th day of September, 1941, wherein (among other things) it was adjudged and decreed "that the United States of America is the holder of all right, title and interest in and to the bed of the Niukluk River below the line of ordinary high water from a point on said Niukluk River fifteen hundred (1500) feet upstream from its confluence with Melsing Creek downstream to its confluence with the Fish River, and to all the values therein; . . .": That a copy of said judgment is attached

hereto marked Exhibit 1 and made a part hereof.

B. That during the year 1947, a law known as Public Law 383—80th Congress, was passed by the Congress of the United States and approved by the President of the United States August 8, 1947, authorizing (among other things) the exploration and mining for gold and other precious metals in Alaska below the line of ordinary high water mark on non-tidal waters navigable in fact, subject, nevertheless, to certain conditions therein prescribed: That a copy of said law is hereto attached marked Exhibit 2 and forms a part hereof.

C. That in accordance with the said law and its provisions the United States, Department of the Army, Corps of Engineers, on the 21st day of October, 1947, issued unto the defendant herein a permit to dredge for gold in the Niukluk River just southeasterly of Council, Alaska: That a copy of said permit is hereunto attached marked Exhibit 3 and forms a part hereof.

D. That the United States, Department of Interior, Bureau of Land Management by and through Circular No. 1667, approved November 26, 1947, prescribed rules and regulations under which mining for gold and other precious metals in the beds and along the shores of navigable waters in Alaska may be pursued: A copy of such rules and regulations is hereunto attached marked Exhibit 4, and forms a part hereof.

E. That with reference to plaintiff's complaint the mining operations of defendant have been and now are being carried on exclusively in the bed of

the navigable waters of the Niukluk River and within the area declared navigable by this Court in Civil Action No. 3473; and in accordance with the law, permit, rules and regulations as hereinabove set forth.

For a second and further answer and defense to the complaint of plaintiff, defendant alleges:

1. That any and all purported rights of plaintiff as in his complaint alleged are founded upon purported mineral locations made upon the navigable waters of the Niukluk River; and these purported rights have been acquired by him with full knowledge of the navigability of the said river, and subsequently to the judgment and decree of this Court in Civil Action No. 3473, referred to herein under "A" of defendant's first affirmative defense.

For a third and further answer and defense to the complaint of plaintiff, defendant alleges:

1. That by deed dated March 17, 1946, and recorded in Vol. 222, Page 498, Cape Nome Precinct Recording Records, Clyde Glass and Violet Glass purported to transfer by warranty deed the following claims "located on the Niukluk River: to F. K. Dent:

Brown,
Glass Fraction,
Magnum,
S & S,
H & H,
Surprise,
Selassie,
Glass Triangle,
Leona.

That all mining claims named in plaintiff's complaint are included in this said deed. That Clyde Glass, one of the grantors, was a party defendant in Civil Action, this Court, No. 3473, referred to hereinbefore, and the judgment and decree rendered therein specifically states that he has no right, title or interest in or to the bed of the navigable waters of the Niukluk River.

VII.

That a reasonable attorney's fee to be allowed defendant for the defense of this action is a sum not less than \$1,500.00.

Wherefore, defendant prays that plaintiff takes nothing by virtue of his action, that the action be dismissed with prejudice, and that defendant recover its cost which shall include a reasonable attorney's fee.

/s/ C. C. TANNER,
Attorney for Defendant,

United States of America,
Territory of Alaska—ss.

Ralph Lomen after being first duly sworn deposes and says:

I am the President and General Manager of the Alaska Placer Company, defendant herein: I have read the foregoing Answer to plaintiff's complaint and know the contents thereof; all things therein stated are true as I verily believe.

/s/ RALPH LOMEN.

Subscribed and Sworn to before me the 24th day of August, 1948.

(Seal) /s/ C. C. TANNER,

Notary Public in and for the Territory of Alaska,
residing at Nome. My commission expires July 18, 1950.

Copy received this 24th August, 1948.

CHAS. J. CLASBY,
Attorney for Plaintiff.

[Endorsed]: Filed Aug. 25, 1948.

[14]

EXHIBIT No. 1

In the District Court of the United States for the
Second Judicial Division of Alaska.

Civil No. 3473

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH E. LUCAS, EUGENE V. LUCAS and
AUGUST HANOT, co-partners, doing business
under the firm name and style of Alaska Placers
Company, a limited partnership, NELS SWAN-
BERG, SR., administrator of the estate of Emil
C. Strom, deceased, sometimes known as Charles
Strom, Clyde D. Glass and John L. Ost,
Defendants.

JUDGMENT

The above matter having come on regularly for trial before the Court on the 18th day of August, 1941; the plaintiff appearing by its attorney, Charles J. Clasby, United States Attorney; the defendant Nels Swanberg, Sr., as administrator of the Estate of Emil C. Strom, deceased, sometimes known as Charles Strom, appearing by his counsel, Leroy M. Sullivan; the defendants Joseph E. Lucas, Eugene V. Lucas and the Alaska Placers Company appearing by their counsel, Ira D. Orton; and the defendant Clyde D. Glass appearing by his counsel, O. D. Cochran; and the defendant John L. Ost failing to appear either in person or by counsel and the Court having heretofore caused to be

entered herein his default for want of answer or any appearance; and the evidence adduced by the parties having been heard, arguments by counsel considered and the Court being fully advised in the premises and having heretofore cause to be made and entered herein its Findings of Fact and Conclusions of Law, Now Therefore

It Is Hereby Ordered, Adjudged and Decreed that the defendants Alaska Placers Company, a limited partnership, Joseph E. Lucas and [15] Eugene V. Lucas, and their servants and agents, be and they are hereby barred from mining or removing in any manner, gold, precious minerals or things of value from the bed of the Nuikluk River below the line of ordinary high water from a point on the Nuikluk River fifteen hundred (1500) feet upstream from its confluence with Melsing Creek downstream to its confluence with the Fish River, which flows into Golofnin Bay off Norton Sound, Territory of Alaska, until such time as legal authority so to do is secured by said defendants from the sovereign owner of said herein described real property.

It Is Further Adjudged and Decreed that the United States of America is the holder of all right, title and interest in and to the bed of the Nuikluk River below the line of ordinary high water from a point on said Nuikluk River fifteen hundred (1500) feet upstream from its confluence with Melsing Creek downstream to its confluence with the Fish River, and to all the values therein; and that Nels Swanberg, Sr., as administrator of the Estate

of Emil C. Strom, deceased, sometimes known as Charles Strom, Clyde D. Glass and John L. Ost as riparian owners of mineral claims do not, by virtue thereof, acquire any right, title or interest in or to the soil or the values therein below the line of ordinary high water, it being specifically declared that the above portion of the Nuikluk River is a part of the navigable waters of the Territory of Alaska.

It Is Further Ordered that the plaintiff have and recover against the defendants its costs to be taxed by the Clerk of this Court, and have execution therefor; provided, however, that all costs incurred in connection with the issuance of the preliminary injunction herein shall be only taxed against the defendants Alaska Placers Company, Joseph E. Lucas and Eugene V. Lucas; and provided further that there shall be taxed as against John L. Ost only those costs incurred in service of process upon him and the entry of his default herein.

Done in open Court at Nome, Alaska, this 29th day of September, 1941.

/s/ J. H. S. MORISON,

United States District Judge.

Copy received this 19th day of September, 1941.

/s/ IRA D. ORTON,

Attorney for defendants Joseph E. Lucas, Eugene V. Lucas and Alaska Placers Co.

/s/ LEROY M. SULLIVAN,

Attorney for Nels Swanberg, Sr., as administrator of the Estate of Emil C. Strom, deceased, sometimes known as Charles Strom.

/s/ O. D. COCHRAN,

Attorney for defendant Clyde D. Glass.

[Endorsed]: Filed Sept. 30, 1948.

[17]

EXHIBIT No. 2

(Public Law 383—80th Congress)

(Chapter 514—1st Session)

(H. R. 174)

AN ACT

To amend section 26, title I, chapter 1, of the Act entitled “An Act making further provision for a civil government for Alaska, and for other purposes”, approved June 6, 1900 (31 Stat. 321), as amended by the Act of May 31, 1938 (52 Stat. 588).

Be it enacted by the Senate and House of Representatives of the United States of America in Con-

gress assembled, That section 26, title I, chapter 1, of the Act entitled "An Act making further provision for a civil government for Alaska, and for other purposes", approved June 6, 1900 (31 Stat. 321), as amended by the Act of May 31, 1938 (52 Stat. 588), is further amended to read as follows:

"Sec. 26. The laws of the United States relating to mining claims, mineral locations, and rights incident thereto are hereby extended to the Territory of Alaska: Provided, That, subject only to the laws enacted by Congress for the protection and preservation of the navigable waters of the United States, and to the laws for the protection of fisheries, and subject also to such general rules and regulations as the Secretary of the Interior may prescribe for the preservation of order and the prevention of injury to the fisheries, all land below the line of ordinary high tide on tidal waters and all land below the line of ordinary high-water mark on non-tidal water navigable in fact, within the jurisdiction of the United States, shall be subject to exploration and mining for gold and other precious metals by citizens of the United States, or persons who have legally declared their intentions to become such, under such reasonable rules and regulations as the miners in organized mining districts may have heretofore made or may hereafter make governing the temporary possession thereof for exploration and mining purposes until otherwise provided by law: Provided Further, That the rules and regulations established by the miners shall not be in conflict with the mining laws of the United

States; and no exclusive permit shall be granted by the Secretary of the Interior authorizing any person or persons, corporation, or company to excavate or mine under any of said waters, and if such exclusive permit has been granted it is hereby revoked and declared null and void. The rules and regulations prescribed by the Secretary of the Interior under this section shall not, however, deprive miners on the beach of the right hereby given to dump tailings into or pump from the sea opposite their claims, except where such dumping would actually obstruct navigation or impair the fisheries, and the reservation of a roadway sixty feet wide under the tenth section of the Act of May 14, 1898, entitled, 'An Act extending the homestead laws and providing for right-of-way for railroads in the District of Alaska, and for other purposes', shall not apply to mineral lands or town sites. No person shall acquire by virtue of this section any title to any land below the line of ordinary high tide or the line of ordinary high-water mark, as the case may be, of the waters described in this section. Any rights or privileges acquired hereunder with respect to mining operations in land title, to which is transferred to a future State upon its admission to the Union and which is situated within its boundaries, shall be terminable by such State, and the said mining operations shall be subject to the laws of such State."

Sec. 2. Nothing in this Act shall be deemed to affect or impair any valid claims, rights or privileges, including possessory claims under the first

proviso of section 8 of the Act of May 17, 1884 (23 Stat. 26), arising under any other provision of law.

Approved August 8, 1947. [18]

EXHIBIT No. 3

Department of the Army

Note—It is to be understood that this instrument does not give any property rights either in real estate or material, or any exclusive privileges; and that it does not authorize any injury to private property or invasion of private rights, or any infringement of Federal, State, or local laws or regulations, nor does it obviate the necessity of obtaining State assent to the work authorized. It merely expressed the assent of the Federal Government so far as concerns the public rights of navigation. (See *Cummings v. Chicago*, 188 U. S., 410.)

PERMIT

United States Engineer Office.

North Pacific Division, Portland, Oregon.

October 21, 1947.

Alaska Placer Company,
327 Colman Building,
Seattle 4, Washington.

Gentlemen:

Referring to written request dated 22 August, 1947, I have to inform you that, upon the recommendation of the Chief of Engineers, and under

the provisions of Section 10 of the Act of Congress approved March 3, 1899, entitled "An act making appropriations for the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes," you are hereby authorized by the Secretary of the Army, to dredge for gold in Niukluk River, at just southeasterly of Council, Alaska, in accordance with the plans shown on the drawing attached hereto and marked: "Proposed Dredging of Placer Mining Claims on Niukluk River. Application by Alaska Placer Company, Seattle, Wash., Aug. 22, 1947," subject to the following conditions: [19]

(a) That the work shall be subject to the supervision and approval of the District Engineer, Engineer Department at Large, in charge of the locality, who may temporarily suspend the work at any time, if in his judgment, the interests of navigation so require.

(b) That any material dredged in the prosecution of the work herein authorized shall be removed evenly, and no large refuse piles, ridges across the bed of the waterway, or deep holes that may have a tendency to cause injury to navigable channels or to the banks of the waterway shall be left. If any pipe, wire, or cable hereby authorized is laid in a trench, the formation of permanent ridges across the bed of the waterway shall be avoided and the back filling shall be so done as not to increase the cost of future dredging for navigation. Any material to be deposited or dumped under this authorization, either in the waterway or on shore

above high-water mark, shall be deposited or dumped at the locality shown on the drawing hereto attached, and, if so prescribed thereon, within or behind a good and substantial bulkhead or bulkheads, such as will prevent escape of the material into the waterway. If the material is to be deposited in the harbor of New York, or in its adjacent or tributary waters, or in Long Island Sound, a permit therefor must be previously obtained from the Supervisor of New York Harbor, Army Building, New York City.

(c) That there shall be no unreasonable interference with navigation by the work herein authorized.

(d) That if inspections or any other operations by the United States are necessary in the interests of navigation, all expenses connected therewith shall be borne by the permittee.

(e) That no attempt shall be made by the permittee or the owner to forbid the full and free use by the public of all navigable waters at or adjacent to the work or structure.

(f) That if future operations by the United States require an alteration in the position of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army, it shall cause unreasonable obstruction to the free navigation of said water, the owner will be required, upon due notice from the Secretary of the Army, to remove or alter the structural work or obstructions caused thereby without expense to the United States, so as to render navigation reasonably free, easy, and unobstructed; and if, upon the expira-

tion or revocation of this permit, the structure, fill, excavation, or other modification of the watercourse hereby authorized shall not be completed, the owners shall, without expense to the United States, and to such extent and in such time and manner as the Secretary of the Army may require, remove all or any portion of the uncompleted structure or fill and restore to its former condition the navigable capacity of the watercourse. No claim shall be made against the United States on account of any such removal or alteration.

(g) That the United States shall in no case be liable for any damage or injury to the structure or work herein authorized which may be caused by or result from future operations undertaken by the Government for the conservation or improvement of navigation, or for other purposes, and no claim or right to compensation shall accrue from any such damage.

(h) That if the display of lights and signals on any work hereby authorized is not otherwise provided for by law, such lights and signals as may be prescribed by the U. S. Coast Guard, shall be installed and maintained by and at the expense of the owner.

(i) That the permittee shall notify the said district engineer at what time the work will be commenced, and as far in advance of the time of commencement as the said district engineer may specify, and shall also notify him promptly, in writing, of the commencement of work, suspension of

work, if for a period of more than one week, resumption of work, and its completion.

(j) That if the structure or work herein authorized is not completed on or before 31st day of December, 1950, this permit, if not previously revoked or specifically extended, shall cease and be null and void.

(k) That this permit is revocable at the will of the Secretary of the Army.

(l) That the gold dredging operations will be conducted in such manner as to provide at all times unhindered passage of river traffic; to maintain free from obstruction existing channels, or to provide equivalent alternate channels; and that dredging spoil will be deposited shoreward from existing channels.

By authority of the Secretary of the Army:

/s/ THERON D. WEAVER,

Colonel, Corps of Engineers, Division Engineer.

War Department. O. C. of E. Form No. 96.

Revised Jan. 17, 1940. [20]

PROPOSED DREDGING
OF
PLACER MINING CLAIMS
ON NIUKLUK RIVER
APPLICATION BY
ALASKA PLACER COMPANY
SEATTLE, WASH. AUG. 22, 1947

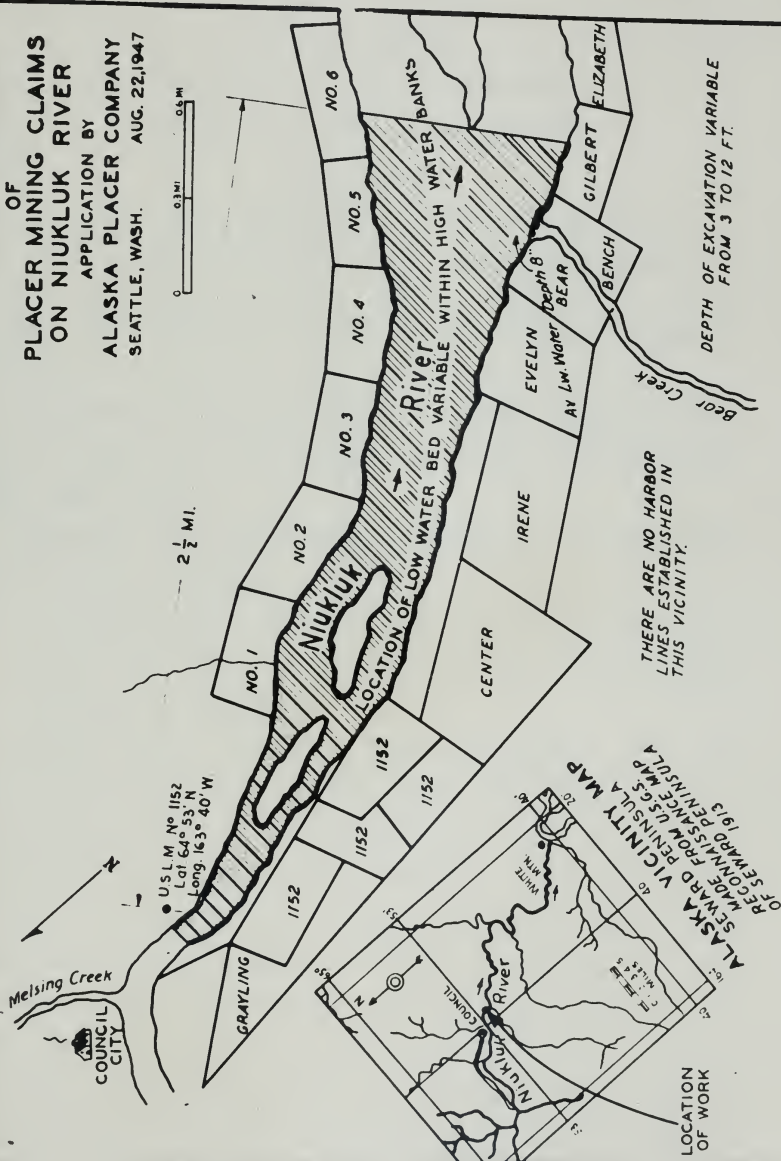


EXHIBIT No. 4

Circular No. 1667

United States

Department of the Interior

Bureau of Land Management

Washington

CODE OF FEDERAL REGULATIONS
TITLE 43—PUBLIC LANDS: INTERIOR

Part 69—Mineral Lands: General Mining Regulations.

Authority: Sections 69.12 to 69.18, inclusive, issued under Act of August 8, 1947 (Public Law 383, 80th Cong.)

Sections 69.12 to 69.18, inclusive, are amended to read as follows:

Mining for gold and other precious metals in the beds and along the shores of navigable waters in Alaska.

Section 69.12. Purpose and authority. The Act of August 8, 1947 (Public Law 383, 80th Cong.) amends section 26 of the Act of June 6, 1900, as amended (31 Stat. 321, 52 Stat. 588; 48 U.S.C. 381) to authorize the exploration and mining for gold and other precious metals in Alaska in land below the line of ordinary high tide on tidal waters and below the line of ordinary high water mark on nontidal waters navigable in fact, subject to certain conditions. It is the purpose of Sections 69.12 to 69.18, inclusive, to set forth the conditions under which such exploration and mining operations may be conducted.

Section 69.13. Filing of notice of intention to mine. Any citizen of the United States, any person who has legally declared his intention to become such, any association of such citizens, or any corporation organized under the laws of the United States or of any State or Territory thereof, shall, before commencing actual operations file a notice of intention to mine or dredge for gold and other precious metals in any of the land described in the preceding section. This notice must be filed in triplicate in the nearest District Land Office, and should contain (a) the full name, address and citizenship of the person filing the notice, (b) a description of the place where the dredge will be initially located or the mining operations otherwise commenced, such place to be connected where practicable by course and distance to a corner of the public land survey on the shore, or if there are no surveyed lands in the vicinity, with the nearest, readily-ascertainable geographical or topographical point, (c) a statement that actual dredging or mining operations will be commenced no later than 90 days after the date of filing of the notice, and (d) a statement that the dredging or other mining operations will comply with all pertinent regulations and laws. [22]

Section 69.14. Area to be dredged. In order to assure the preservation of order and the avoidance of conflict, each dredge commencing operations in accordance with Sections 69.12 to 69.18, inclusive, shall not be interfered with by other dredging or mining operations within an area of 200 feet in

the direction of either bank and within a space of 500 feet up or down stream. This area shall be indicated by properly-placed buoys. Other dredges or boats are to have access to such area for passage and navigational purposes, but, while passing through that area, are not to extract any minerals nor engage in any dredging or moving of materials except as may be necessary for the actual movement of the equipment.

Section 69.15. Restrictions on dredge location. No dredge shall be placed in a position or be so operated as to interfere with the free passage of boats on nontidal waters navigable in fact or along the shore line of tidal waters, or interfere with the landing at any public wharf, or with other authorized means for landing stores or supplies. No dredge shall be located nearer to the shore than 100 feet from the line of ordinary low tide on tidal waters. Nor shall any dredge be located within the limits of frontage occupied by any townsite, mission or trading company with established entry under the law.

Section 69.16. Laws for the protection of navigable waters and fisheries. No dredging or other mining operations shall be conducted unless all the applicable laws and regulations relating to navigable waters and to the protection of fisheries are complied with.

Cross Reference: The regulations of the Fish and Wildlife Service of the Department of the Interior concerning fisheries are codified in 50 CFR. For regulations of the Department

of War concerning navigable waters, see 33 CFR.

Section 69.17. Prior rights protected. No dredging or other mining shall in any way be deemed to affect or impair any valid claims, rights or privileges arising under any other provision of law, including possessory claims under the first proviso of Section 8 of the Act of May 17, 1884 (23 Stat. 26).

Section 69.17a. Dredging under prior regulations. Dredging or other mining operations which were commenced after the date of enactment of the Act of August 8, 1947 (Public Law 383, 80th Cong.) but before the effective date of this revision of Sections 69.12 to 69.18, inclusive, and notices of intention to commence such operations which were filed between those two dates, are considered valid in all respects if there has been full compliance with the pertinent requirements of Sections 69.12 to 69.18, inclusive, as printed in 43 CFR, Cum. Supp.

Section 69.18. No title to be acquired; rights of future States. No dredging or other mining operations shall authorize, or be permitted to lead to, the acquisition of title to any of the land dredged or mined. [23] Any privileges acquired with respect to mining operations in land, title to which is later transferred to a future State upon its admission to the Union, and which is situated within its boundaries, shall be terminable, by such State, and

the mining operations shall be subject to the laws of such State.

/s/ FRED W. JOHNSON,
Director.

Approved Nov. 26, 1947.

/s/ OSCAR L. CHAPMAN,
Acting Secretary of the Interior. [24]

[Stamped]: Received U. S. Land Office, Nome, Alaska. Date Jan. 21, 1948.

[Title of District Court and Cause.]

AFFIDAVIT IN OPPOSITION TO
INJUNCTION PENDENTE LITE

United States of America,
Territory of Alaska—ss.

Ralph Lomen being first duly sworn upon oath deposes and says:

I am the President and General Manager of the Alaska Placer Company, defendant herein:

The Alaska Placer Company has complied with all laws prerequisite to the right to defend this action:

Plaintiff's action herein is based upon purported rights acquired by reason of placer mineral locations upon the Niukluk River below Council, Alaska, and upon a portion of the said river which is navigable. (See Civil Action No. 3473, this Court.): That a copy of the Judgment and the Decree rendered in the matter of Civil Action No. 3473, is attached hereto as Exhibit 1 and made a part hereof:

That any and all purported rights of plaintiff as alleged have been acquired by him with full knowledge of the navigability of the said Niukluk River and subsequent to the Judgment and Decree in Civil Action No. 3473 as aforesaid:

That by deed dated March 17, 1946, and recorded in Vol. 222, Page 498, Cape Nome Precinct Recording Records, Clyde Glass and Violet Glass purport to transfer by warranty deed the following claims "located on the Niukluk River"; to F. K. Dent,

Brown,
Glass Fraction,
Magnum,
S & S,
H & H,
Surprise,
Selassie,
Glass Triangle,
Leona.

That all the mining claims named in plaintiff's complaint are included in this said deed: That Clyde Glass, one of the grantors, was a party defendant in Civil Action, this Court, No. 3473, referred to hereinbefore, and it is specifically declared in said Judgment (besides other things) that ". . . Clyde D. Glass and John L. Ost as riparian owners of mineral claims do not, by virtue thereof, acquire any right, title or interest in or to the soil or the values therein below the line of ordinary high water, it being specifically declared that the above portion of the Niukluk [25] River is a part of the navigable waters of the Territory of Alaska.":

That on the 8th day of August, 1947, the President of the United States approved a law passed by Congress known as Public Law 383—80th Congress, which (among other things) subjected to exploration and mining of gold and other precious metals by citizens of the United States or persons who have legally declared their intention to become such, of all land below the line of ordinary high water mark on nontidal waters navigable in fact, within the jurisdiction of the United States: That a copy of said law is attached hereto marked Exhibit 2 and made a part hereof:

That on the 21st day of October, 1947, the United States, Department of the Army, Corps of Engineers, issued unto defendant herein a permit to dredge for gold in the Niukluk River just southeasterly of Council, Alaska: That a copy of said permit is attached hereto marked Exhibit 3 and made a part hereof:

That the United States, Department of Interior, Bureau of Land Management, by and through Circular No. 1667, approved November 26, 1947, prescribed rules and regulations under which mining for gold and other precious metals in the beds and along the shores of navigable waters in Alaska may be pursued: That a copy of Circular No. 1667 is attached hereto as Exhibit 4 and made a part hereof:

That defendant's entire mining operations on the Niukluk River over the period covered in plaintiff's complaint have been and now are within

the limits of the navigable waters of the Niukluk River below Council, Alaska, and in compliance with the law, permit and regulations referred to and set forth in this affidavit:

That at no time during the time defendant has been operating upon the Niukluk River as aforesaid has plaintiff attempted to mine on the said river below Council, Alaska, and defendant has at no time interfered with plaintiff in the matter of such operations; that plaintiff has never been ousted from the said river by the defendant or from any property to which he is legally entitled:

That plaintiff's affidavit filed in this cause in reference to an injunction *Pendente lite* is in many respects misleading and in certain respects untrue: That defendant herein claims no right to the bed of the navigable waters of the Niukluk River except as granted by and through the United States Government as hereinbefore set forth. That the drill logs referred to in plaintiff's affidavits show that there were thirty-six (36) completed drilling holes—one of which showed a value of \$2.00 per yard; one a value of \$2.25 per yard; one, wherein a nugget was recovered, of \$17.00 per yard; six between \$1.00 and \$2.00 per yard; and twenty-seven below \$1.00 per yard: That defendant has never mined and is not now mining on any mining property of plaintiff and has no intention of doing so:

That the present assets of defendant includes a flume dredge and machinery all in first-class condition, valued at \$100,000.00, and an Allis Chalmers tractor and dozer (H.P. 14), valued at \$12,000.00,

buildings valued at \$2,500.00, patented mining claims valued at \$5,000.00, other unpatented mining claims owned and leased by defendant, valued at \$20,000.00, and oil and supplies valued at \$10,000.00, and in addition to the rights and privileges held from the United States to mine and extract gold and other valuable minerals from the navigable waters of the Niukluk River, and that the total indebtedness of defendant does not exceed \$35,000.00: That this defendant is not insolvent and will be able to pay all damages which may be awarded to plaintiff by reason of his action: [26]

That a dredge operating in the short mining seasons of the Second Division of Alaska must operate the entire season in order for it to have a reasonably fair chance of making a profit, and that to enjoin defendant from the operation of its dredge would be a severe financial loss to the defendant, and such injunction cannot be justified through the pleadings and affidavits in this cause, actual facts and the law governing:

That defendant has filed its answer herein and affiant respectfully requests the Court to consider

these pleadings in connection with this affidavit and the motion of plaintiff herein.

/s/ RALPH LOMEN.

Subscribed and Sworn to before me the 24th day of August, 1948.

(Seal) /s/ C. C. TANNER,

Notary Public in and for the Territory of Alaska,
residing at Nome. My commission expires July
18, 1950.

Copy received this 24th day of August, 1948.

CHAS. J. CLASBY,
Attorney for Plaintiff.

[Endorsed]: Filed Aug. 25, 1948. [27]

[Printer's Note]: Exhibits 1, 2, 3, and 4 are identical with Exhibits 1, 2, 3, and 4 attached to the Answer and are set out at pages 20, 23, 26, 33, of this printed record.

[Title of District Court and Cause.]

REPLY AFFIDAVIT—F. K. DENT

United States of America,
Territory of Alaska—ss.

F. K. Dent, being first duly sworn upon his oath deposes and says: That I am the Plaintiff in the above entitled action and make this affidavit in support of my Motion for an Injunction Pendente Lite.

That attached hereto marked "Exhibit A" is a full, true and correct copy of circular No. 1667 issued by the United States of the Interior. That regulations therein promulgated are the only regulations, to affiant's knowledge, that have been issued by said Department under the authority of the Act of Congress of August 8, 1947; and to affiant's knowledge said regulations are still in force and effect.

That attached hereto marked "Exhibit B" is a full, true and correct copy of the minutes of a meeting of miners held at Council, Alaska on the 29th day of June, 1948. That to affiant's knowledge the rules and regulations concerning the temporary possession of the bed of the Niukluk River, where navigable, have not been since altered, amended or changed and are now in full effect and force.

Further affiant saith not.

/s/ F. K. DENT. [38]

Subscribed and Sworn to before me this 24th day of August, 1948.

(Seal) /s/ NORVIN W. LEWIS,
Clerk of the District Court, Territory of Alaska,
Second Division.

Copy received Aug. 25, 1948.

C. C. TANNER,
Atty. for Defendant.

[Printer's Note]: Exhibit "A" is similar to Exhibit No. 4, attached to Answer, page 33, of this printed Record. [39]

“EXHIBIT B”

MINUTES OF MINERS MEETING
COUNCIL, ALASKA

June 29, 1948

Pursuant to notice dated June 28, 1948, the people assembled in the School House, Council, Alaska, for the purpose of organizing a Miners' Meeting. Meeting was called to order at 3:37 p.m., and nominations for temporary chairman and temporary secretary was called for. Whereupon Mr. Allen Lee nominated F. K. Dent as temporary chairman and Mr. Nels Swanberg, Jr., as temporary secretary, and upon vote, the nominations were carried.

The temporary chairman then called for nominations of a permanent chairman. Mr. Clyde D. Glass nominated F. K. Dent, seconded by Mr. Nels Swanberg, Jr. There were no other nominations and motioned carried.

The chairman then called for nominations of a permanent secretary. Mr. Richard E. Lee nominated Mr. Nels Swanberg, Jr., seconded by Mr. Allen W. Lee. There being no other nominations, motioned carried.

The chairman then stated that the purpose of organizing a Miners' Meeting in Council, Alaska, was to adopt rules and regulations for the mining of navigable streams and for such other business that might be brought before the Miners' Meeting for action.

The chairman then appointed Mr. Richard E. Lee and Mr. Nels Swanberg, Jr., to act with the

chairman to propose rules and regulations to be submitted to the Miners' Meeting for consideration.

The committee submitted the following rules and regulations:

Rule 1.

Owner, or owners, of valid placer locations embracing within its boundaries any portion of the bed of a navigable stream shall have the exclusive right to prospect and mine said portion of the bed of a navigable stream so long as such valid mining locations are maintained in effect under the laws of the United States, or the Territory of Alaska.

Rule 2.

The owner, or owners, of valid placer mining locations abutting ordinary high water on the banks of navigable rivers shall have the exclusive right to prospect and mine the beds of navigable streams abutting such placer mining locations from mean high water to the center or thread of the stream at summer low water so long as such mining locations remain in effect under the laws of the United States, or the Territory of Alaska.

Rule 3.

The rights of exclusive possession for the purpose of prospecting and mining in these rules and regulations provided are for the temporary use of the beds of navigable streams, shall not confer any property right, and apply with equal force and effect to all valid mining locations heretofore made, and all those hereafter made. The applications of

these rules is by this meeting limited to the Niukluk River in the Council District of the Seward Peninsula.”

Mr. Allen W. Lee moved that the above rules submitted by the Committee be accepted. Motion seconded by Mr. Clyde D. Glass. The chairman then called for discussion, and a lengthy discussion followed. The chairman then called for a vote on the question. The following members voted for the adoption of the rules and regulations as submitted: Lee R. Taylor, R. O. Lee, B. L. Crosby, Knute Olson, Richard E. Lee, Mrs. F. K. Dent, Clyde D. Glass, Nels Swanberg, Jr., William Brookins, L. Tinkham, Axel T. Edman, A. C. Brown, Allen W. Lee, Max Ellingson, Nels Swanberg, Sr., F. P. Durocher.

The following members refused to vote either for or against: Ralph Lomen, Warren Davis, Charley Gustavson.

There being no further business to come before the meeting, the same was adjourned at 5:00 p.m.

NELS SWANBERG, JR.,
Secretary.

F. K. DENT,
Chairman.

[Endorsed]: Filed Aug. 25, 1948.

[43]

[Title of District Court and Cause.]

REPLY AFFIDAVIT—F. K. DENT

United States of America,
Territory of Alaska—ss.

F. K. Dent, being first duly sworn, on his oath deposes and says:

I am the plaintiff in the above entitled action, and make this affidavit in support of my petition for the entry herein of a temporary restraining order.

Plaintiff denies that defendant's mining operations, or any part thereof, are authorized or are in compliance with the law, permit, and regulations referred to in the affidavit of Ralph Lomen, and affirms that said operations are in violation of the legal rights of plaintiff.

Affiant states he is legally entitled to the temporary exclusive possession of the bed of the Niukluk River, in the area alleged, and that the admitted acts of defendant constitute an ouster.

Further affiant sayeth not.

/s/ F. K. DENT.

Subscribed and Sworn to before me this 24th day of August, 1948.

(Seal) /s/ NORVIN W. LEWIS,

Clerk of Court, Second Division, Territory of Alaska.

Copy received this 25th day of August, 1948.

/s/ C. C. TANNER,

Attorney for Defendant.

[Endorsed]: Filed Aug. 25, 1948.

[44]

[Title of District Court and Cause.]

STIPULATION

Comes now the respective parties above named by and through their attorneys of record herein and stipulate that the hearing on the order to show cause relating to a temporary injunction this day by the court set for August 30, 1948, be reset to, and heard upon, the 31st day of August, 1948, at the hour of 2 o'clock in the afternoon.

Dated August 26, 1948.

/s/ C. C. TANNER,

Attorney for Defendant.

COLLINS and CLASBY,

By /s/ CHAS. J. CLASBY,

Attorneys for Plaintiff.

[Endorsed]: Filed Aug. 26, 1948.

[45]

[Title of District Court and Cause.]

SECOND AFFIDAVIT IN OPPOSITION TO INJUNCTION PENDENTE LITE

United States of America,
Territory of Alaska—ss.

Ralph Lomen, after being first duly sworn, upon oath deposes and says:

I am the President and General Manager of Alaska Placer Company, defendant herein, and I make this second affidavit in opposition to an injunction pendente lite for the reason that plain-

tiff, by his "Reply" Affidavits filed herein, has injected new issues into the controversy at hand.

That F. K. Kent, ever since soon after the judgment in this Court in Civil action No. 3473, dated Sept. 29, 1941, (copy of which being attached to defendant's first affidavit filed herein as exhibit 1) has been endeavoring to get a monopoly and the exclusive control, for mining purposes, of the navigable waters of the Niukluk River below Council, Alaska, and in support of this, affiant submits the following taken from the recording records of the Cape Nome Precinct, Second Division, Alaska.

(All claims listed are on the Niukluk River below Council, and cover the area in controversy.) [46]

I—DEEDS

Deed dated March 7, 1942 F. P. Durocher to F. K. Dent conveys $\frac{1}{2}$ interest in Glass Fraction. Rec. Vol. 222, Page 498: Filed March 14, 1946.

Deed dated June 1, 1942. C. O. Steiner to F. K. Dent conveys "my interest" in Glass Fraction, Magnum, S & S, H & H, Surprise, Selassie, Leona, Brown, Florence, Rainbow. Rec. Vol. 222, Page 496: Filed for record March 14, 1946.

Deed dated June . . , 1942. S. W. Hensel and Mattie Hensel to F. K. Dent conveys—all of claims named just above. Rec. Vol. 222, Page 497: Filed for record March 14, 1946.

Deed (Warranty) dated March 4, 1946. Clyde Glass and Violet Glass to F. K. Dent. Conveys following claims: Brown, Glass Fraction, Magnum, S & S, H & H, Surprise, Selassie, Glass Triangle,

Leona. Rec. Vol. 222, Page 498: Filed March 14, 1946.

Deed dated March 4, 1946. F. P. Durocher to F. K. Dent. Conveys following claims: Lucky, Timber, Ice, Moon, Rocker, River, Gracie. Rec. Vol. 222, Page 499: Filed March 14, 1946. [47]

II—LOCATIONS

The following locations are on record purportedly covering all of the Niukluk River from Melsing Creek, for miles down stream: Located by F. K. Dent and others and claimed by F. K. Dent as owner, as shown in "Notices of Holding Mining Claims" hereinafter set forth:

Idaho Claim—Rec. Vol. 220 P. 440. Located Oct. 1, 1942. 850x600 900x650 feet. Adjacent to Melsing Creek. (One locator)

Georgia Ass'n—Rec. Vol. 220 P. 437. Located Sept. 30, 1942. 1320x1320 feet. 1000 feet below Melsing Creek. (One locator)

Florida Ass'n—Rec. Vol. 220 P. 438. Located Sept. 30, 1942. 1320x1320 feet. One-half mile below Council. (One locator)

Delaware Ass'n—Rec. Vol. 220 P. 439. Located Sept. 30, 1942. 1320x1320 feet. Three-fourths mile below Council. (One locator)

Colorado Ass'n—Rec. Vol. 220 P. 438. Located Sept. 30, 1942. 1320x1320 feet. One mile below Council. (One locator)

Indiana Claim—Rec. Vol. 220 P. 441. Located Oct. 1, 1942. 2640x500 feet. One mile from Council. (One locator)

Illinois Claim—Rec. Vol. 220 P. 441. Located Oct. 1, 1942. 1320x660 feet. One mile from Council. (One locator)

Arizona Ass'n—Rec. Vol. 220 P. 437. Located Oct. 1, 1942. 1320x1320 feet. One and one-half miles below Council. (One locator)

Iowa Claim—Rec. Vol. 220 P. 439. Located Oct. 1, 1942. 780x1100x780x780 feet. One and one-half miles below Council. (One locator) [48]

Alabama Triangle—Rec. Vol. 220 P. 440. Located Oct. 1, 1942. 1320x1320x1750 feet. Two miles below Council. (One locator)

Arkansas Ass'n—Rec. Vol. 220 P. 437. Located Oct. 1, 1942. 1320x1320 feet. 1320 feet above Bear Creek. (One locator)

III—NOTICES—INTENTION TO HOLD CLAIMS

Notices of Intention to hold all of the above claims were filed by or for F. K. Dent as "Owner" as follows:

July 1, 1943—Rec. Vol. 223 P. 167

June 27, 1944—Rec. Vol. 223 P. 269

June 21, 1945—Rec. Vol. 223 P. 412

That in order to gain this monopoly and control of the Niukluk River, F. K. Dent has not only located or caused to be located the foregoing claims (which were evidently not located in accordance with law), and secured deeds as heretofore shown, but in addition thereto he has for several years past had the services of one or another of the following attorneys: O. D. Cochran, Herbert L. Faulk-

ner and Chas. J. Clasby—for the primary purpose of keeping all persons but himself and others closely associated with him from mining the navigable bed of the Niukluk River.

That in a further attempt to monopolize the said river and to keep others from mining thereon, F. K. Dent mailed to Alaska Placer Company from Seattle, Washington, (with letter dated Sept. 23, 1947) the following instrument:

“Notice of Intention to Dredge in Navigable Waters

Notice is hereby given that pursuant to Public Law 383, 80th Congress, Chapter 514, 1st Session, entitled

“An Act to amend section 26, title I, chapter I, of the Act entitled “An Act making further provision for a civil government for Alaska, and for other purposes”, Act of May 31, 1938 (52 Stat. 588).

the undersigned, owner of the following described placer mine claims, to-wit: [49] Glass Fraction, Glass Triangle, Florence, Rocky, Magnum, Rainbow, Timber, Bear, S & S, Leona, River, Lucky, H & H, Water, Moon, Ice, situated on and in the Niukluk River near Council, Alaska in latitude approximately 64 degrees 53 minutes North and longitude approximately 163 degrees 40 minutes West, does intend to dredge for gold and other precious metals in the waters of the Niukluk River and in the gravel bars thereof adjacent covered by the above named placer mining claims, location notices of which are on record in the office of the Recorder for the recording district at Nome, Alaska

and which claims were located as placer mining ground by Clyde D. Glass of 8150 Ninth S.W., Seattle, and Fred Durocher of Council, Alaska and which is under lease and option to the undersigned and has been under lease and option for several years last past.

The undersigned has a permit from the District Engineer, U. S. War Department, to dredge this ground and which permit is dated February 11, 1946 at Seattle, Washington.

The undersigned has claimed and does now claim ground covered by the placer mine locations and claims aforesaid and hereinabove mentioned and these claims were formerly occupied and mined by the predecessors in interest of the undersigned and mining operations thereon were interrupted by order of the district court at Nome, Alaska on September 29, 1941 and since that date no mining has been permitted upon the claims of the undersigned until the passage of the Act of Congress hereinabove mentioned.

This notice is given to all persons that the undersigned and his predecessors in interest have held these mining claims for more than ten years and intends to hold them and to occupy them and dredge for gold and precious metals thereon and that legal proceedings will be commenced against all trespassers thereon. The undersigned is now the owner and entitled to the possession of all of the mining claims hereinabove mentioned, part of which are above the line of high water and part below. All persons trespassing on the claims will be prosecuted.

Notice is further given that the undersigned has applied to the Bureau of Land Management, Department of the Interior, Washington, D. C. for a formal permit to mine the ground aforesaid under the provisions of Public Law 383 and the application is pending pursuant to regulations which are now being prepared by the Bureau of Land Management.

Done at Nome, Alaska the 23rd day of Sept., 1947.

/s/ F. K. DENT."

That to the best knowledge and belief of affiant, F. K. Dent has never mined or attempted to mine the bed of Niukluk River below Council.

That the purported Miners Meeting set forth in plaintiff's reply affidavit is a still further attempt on plaintiff's part to circumvent the law and gain his desired control: That the only notice given in respect to the said meeting was an unsigned [50] written notice delivered to hand-picked individuals in the vicinity of Council on June 28, 1948, calling for a meeting June 29, 1948; that a copy of such notice which was delivered to affiant June 28, 1948, by F. K. Dent is as follows:

"NOTICE OF MINERS MEETING

Notice, There will be a Miners Meeting held in the School House, Council, Alaska, Tuesday, June 29th, 1948, at 3:30 p.m. to transact any business that might be presented at the meeting.

Please take due notice.

Dated June 28, 1948."

That everything done at this said meeting had been prearranged; the rules and regulations had been prepared by the plaintiff's lawyers prior to the meeting and were not changed.

That this meeting was held subsequent to the publication of rules and regulations of the Department of Interior relative to mining operations on navigable rivers in Alaska, and subsequent to defendant's mining on the said river, in pursuance to these regulations and the law provided.

That to the best information and belief of affiant, the only mining district which includes that portion of the Niukluk River in controversy is the Cape Nome Precinct.

That it is the belief of affiant that the aforesaid rules are in controvention of existing law and the rules and regulations published in accordance therewith.

That F. K. Dent has been appraised of and aware of the intention of defendant to mine in the navigable waters of the Niukluk River below Council, Alaska, prior to the fall of 1947 when it floated its dredge down the river to prepare for 1948 operations: That in the month of October, 1947, Mr. Dent informed G. R. Jackson, of Nome, Alaska, and also Al Anderson, Sect. of the Alaska Miners Association, that he was going to sue defendant in respect to the matter now before the Court: That for several years last past he has had attorneys retained in this matter, but [51] nevertheless, with all of this before him he has waited until the middle of the 1948 mining season,

when defendant's dredge is in operation, to bring action and enjoin defendant.

/s/ RALPH LOMEN.

Subscribed and sworn to before me the 30th day of August, 1948.

(Seal) /s/ C. C. TANNER,
Notary Public for Alaska. My commission expires
July 18, 1950.

[Endorsed]: Filed Aug. 30, 1948.

[52]

In the District Court for the Territory of Alaska
Second Division.

Case No. 3781—Civil

F. K. DENT,

Plaintiff,

vs.

ALASKA PLACER COMPANY,
a Corporation,

Defendant.

OPINION

Charles J. Clasby, Fairbanks, Alaska, Attorney for
Plaintiff. C. C. Tanner, Nome, Alaska, Attorney
for Defendant.

Plaintiff brings an action in ejectment against the defendant corporation and applies for a temporary restraining order pending the trial of the action.

The complaint alleges that the plaintiff is now, and for more than six years last past has been,

the owner in fee as to all persons, save and except the United States of America, and has been and now is entitled to the exclusive possession of six (6) placer mining claims all situated "on or across" the Niukluk River, except one (1) claim situate on the right limit of that river. It further alleges that such locations specifically include the right of exclusive possession of all of the bed of the Niukluk River within the end lines of said claims, and that the defendant Corporation, on or about the 15th day of September, 1947, ousted an dejected plaintiff therefrom, and now wrongfully and unlawfully withholds them from plaintiff to his damage in the sum of One Hundred Twenty Thousand (\$120,000.00) Dollars, by reason of its mining the same with a dredge, thus depleting plaintiff's estate. The defendant corporation admits that it has operated a gold dredge during the [53] time and at the place alleged by the plaintiff.

It appears from the affidavits and pleadings filed in the case that the Niukluk River is a navigable stream, navigable in fact, and so declared to be in the case of the United States of America vs. Clyde D. Glass, et al., No. 3473, in this Court decided September 29th, 1941.

The affidavits also set forth in full the Act of Congress (Public Law 383—80th Congress—Title 48, Section 381), approved August 8, 1947, under the terms of which both plaintiff and the defendant corporation claim they are entitled to conduct mining operations. The Act follows:

"The laws of the United States relating to mining claims, mineral locations, and rights incident

thereto are extended to the Territory of Alaska: Provided, that, subject only to the laws enacted by Congress for the protection and preservation of the navigable waters of the United States, and to the laws for the protection of fisheries, and subject also to such general rules and regulations as the Secretary of the Interior may prescribe for the preservation of order and the prevention of injury to the fisheries, all land below the line of ordinary high tide on tidal waters and all land below the line of ordinary high-water mark on nontidal water navigable in fact, within the jurisdiction of the United States, shall be subject to exploration and mining for gold and other precious metals by citizens of the United States, or persons who have legally declared their intentions to become such, under such reasonable rules and regulations as the miners in organized mining district may have heretofore made, or may hereafter make, governing the temporary possession thereof for exploration and mining purposes until otherwise provided by law: Provided further, that the rules and regulations established by the miners shall not be in conflict with the mining laws of the United States; and no exclusive permit shall be granted by the Secretary of the Interior authorizing any person or persons, corporation, or company, to excavate or mine under any of said waters, and if such exclusive permit has been granted, it is hereby revoked and declared null and void. [54] The rules and regulations prescribed by the Secretary of the Interior under this section shall not, however,

deprive miners on the beach of the right hereby given to dump tailings into or pump from the sea opposite their claims, except where such dumping would actually obstruct navigation or impair the fisheries, and the reservation of a roadway sixty feet wide under 462 of this Title shall not apply to mineral lands or townsites. No person shall acquire by virtue of this section any title to any land below the line of ordinary high tide or the line of ordinary high-water mark, as the case may be, of the waters described in this section. Any rights or privileges acquired hereunder with respect to mining operations in land, title to which is transferred to a future state upon its admission to the Union, and which is situated within its boundaries, shall be terminable by such state, and the said mining operations shall be subject to the laws of such state.

Section 2. Nothing in this Act shall be deemed to affect or impair any valid claims, rights or privileges, including possessory claims, under the first proviso of Section 8 of the Act of May 17, 1884, (23 Stat. 26) arising under any other provision of law."

Plaintiff attaches to his reply affidavit a copy of minutes of a miners' meeting held at Council, Alaska, on the Niukluk River, on June 29, 1948, containing rules and regulations adopted thereat, but limited by their terms to the Niukluk River, as follows:

"Rule 1. Owner, or owners, of valid placer locations, embracing within its boundaries any por-

tion of the bed of a navigable stream shall have the exclusive right to prospect and mine said portion of the bed of a navigable stream so long as such valid mining locations are maintained in effect under the laws of the United States, or the Territory of Alaska.”

“Rule 2. The owner, or owners, of valid placer mining locations abutting ordinary high water on the banks of navigable rivers shall have the exclusive right to prospect and mine the beds of navigable streams abutting such placer mining locations from mean high water to the center or thread of the stream at summer low [55] water, so long as such mining locations remain in effect under the laws of the United States or the Territory of Alaska.”

“Rule 3. The rights of exclusive possession for the purpose of prospecting and mining in these rules and regulations provided are for the temporary use of the beds of navigable streams, shall not confer any property right, and apply with equal force and effect to all valid mining locations heretofore made and all those hereafter made.”

The Court will take judicial notice of the fact that for many years past the Cape Nome Recording Precinct, including within its boundaries the claims of the plaintiff and all of the Niukluk River, has been established under law as a recording district with a recorder whose duty it is to receive and record records pertaining to mining locations and other rights, including water rights, and that the practice of establishing mining dis-

tricts in Alaska and the holding of miners' meetings for the purpose of establishing mining districts and the adoption by the miners of rules and regulations governing matters long since provided for by law, have been discontinued. Congress knew of the establishment of our Territorial Legislature and undoubtedly knew that the Legislature was empowered to enact statutes governing the mining of placer claims in matters not in conflict with the powers of Congress over the public domain.

The rules and regulations show that the plaintiff who claims the right by reason of his placer locations "on and across" the Niukluk River, to mine the bed of that stream, was chairman of the miner's meeting. The pleadings further show that he has known of the operations of the defendant corporation since September 15, 1947. The record fails to show that he has filed with the Secretary of Interior the notice of intention to prospect or mine the [56] bed of the stream. The plaintiff may even at this date go upon the Niukluk River and prospect and mine its bed by complying with the rules and regulations of the Secretary of the Interior, since by the Act's terms, the Secretary is prohibited from granting an exclusive right to any person to mine the beds of navigable waters.

The beds of streams navigable in fact have never been considered as public lands. They were not granted by the Constitution to the United States, but are held in trust for the future state. They cannot be acquired as part of placer mining claims,

since such claims extend only to the ordinary high water mark of the stream.

Lindley on Mines (3rd Ed) Section 428.

The plaintiff in this case asserts that because his five claims are "on or across" the Niukluk River, he has an exclusive right to prospect and mine the portion of the bed of that stream which lies within his claims. Certainly before the passage of the Act of August 8, 1947 above set forth, he had no such right.

As stated in *Columbia Canning Company vs. Hampton*, 161 Fed. 60, "* * * that while the owner or locator of lands in Alaska which border on navigable or tidal waters has, under the general laws, the right of access to such waters for purposes of navigation, he can acquire no right or title in the soil below high-water mark, and he can have, therefore, no right of possession upon which he can base an action against an intruder whom he charges with interfering with or obstructing him in the erection and use of a structure upon the shore below high-water mark".

Does the Act of August 8, 1947 give him the exclusive right to prospect for and mine gold in the bed of the navigable stream which his claims cross? [57]

A reading of the Act will disclose that it was the intent of Congress to provide no exclusive right to the lands under navigable waters. The conditions under which mining for gold or other precious metals may be taken apply to all citizens and those who have legally declared their inten-

tion to become such, subject, however, to the laws enacted by Congress for the protection and preservation of navigable waters, the fisheries, and under rules and regulations by the Secretary of the Interior, for the preservation of order and the prevention of injuries to the fisheries.

The Act in Section 2 provides:

“Sec. 2. Nothing in this Act shall be deemed to affect or impair any valid claims, rights or privileges, including possessory claims under the first proviso of Section 8 of the Act of May 17, 1884 (23 Stat. 26) arising under any other provision of law.”

It is argued by plaintiff that this Section secures to plaintiff the right to prospect and mine the bed of the Niukluk River below the line of ordinary high-water mark on those claims which are “on and across” that river. It is clear that prior to the passage of the Act of August 8, 1947, plaintiff had no right or claim to the bed of that river, it being navigable in fact. Section 2 protects only valid claims, rights and privileges existing before and at the time of the passage of the Act. Since plaintiff and his predecessors in interest had been foreclosed from claiming any such claim, right or privilege in the bed of that stream, he cannot now invoke Section 2 to bring into existence that which he had never had.

A careful study of the pleadings and affidavit fails to convince the Court that the plaintiff has such a clear right to entitle him to injunctive relief. [58] He must depend upon the strength

of his own title and not on the weakness of that of his opponent. Any valid claim, right or privilege which he had and now has is limited to that portion of his placer locations which are a part of the public domain. He has failed to show, either in his pleadings or affidavits that he has complied with the rules and regulations of the Secretary of the Interior which provide (Circular 1667, U. S. Dept. of Int. Bureau of Land Management, Title 43—Section 69.12 to 69.18, promulgated November 26, 1947):

“Any citizen of the United States, any person who has legally declared his intention to become such, any association of such citizen, or any corporation organized under the laws of the United States or of any State or Territory thereof, shall, before commencing actual operations, file a notice of intention to mine or dredge for gold and other precious metals in any of the land described in the preceding section. This notice must be filed in triplicate in the nearest District Land Office, and should contain (a) the full name, address and citizenship of the person filing the notice; (b) a description of the place where the dredge will be initially located or the mining operations otherwise commenced, such place to be connected where practicable by course and distance to a corner of the public land survey on the shore, or if there are no surveyed lands in the vicinity, with the nearest, readily-ascertainable geographical or topographical point; (c) a statement that actual dredging or mining operations will be commenced no later

than 90 days after the day of the filing of the notice, and (d) a statement that the dredging or other mining operations will comply with all pertinent regulations and laws.”

The injunction pendente lite will be denied.

Dated at Nome, Alaska, this 7 day of September, 1948.

JOSEPH W. KEHOE,
U. S. District Judge

[Endorsed]: Filed Sept. 7, 1948. [59]

In the District Court for the Territory of Alaska
Second Division

No. 3781—Civil

F. K. DENT,

Plaintiff,

vs.

ALASKA PLACER COMPANY, a Domestic
Corporation,

Defendant.

ORDER DENYING INJUNCTION PENDENTE
LITE

The application for an injunction pendente lite in the above-entitled case having been heard pursuant to the order of the court made on the 11th day of August, 1948; and the Court having heard the arguments of the attorneys for the respective parties, and having duly considered the pleadings and the affidavits filed herein.

It is hereby ordered that the application of the plaintiff in this case for an injunction pendente lite be, and the same is hereby, denied.

Dated, the 7th day of September, 1948.

/s/ JOSEPH W. KEHOE,
U. S. District Judge.

[Endorsed]: Filed Sept. 7, 1948. [60]

[Title of District Court and Cause]

NOTICE OF APPEAL

To Alaska Placer Company, the Defendant above named, and to C. C. Tanner, its Attorney:

Notice is hereby given that the above named Plaintiff hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, from the Interlocutory Order denying Injunction Pendente Lite made and entered in this action by the above entitled Court, on the 7th day of September, 1948, wherein it was ordered that the application of the Plaintiff for an Injunction Pendente Lite restraining the Defendant from the mining and extracting of minerals from the mining claims of Plaintiff more particularly described in the Complaint on file in the above entitled action was denied.

COLLIN & CLASBY,

By /s/ CHAS. J. CLASBY,

Attorneys for Plaintiff.

(Acknowledgement of Service.)

[Endorsed]: Filed Oct. 1, 1948. [61]

[Title of District Court and Cause]

PETITION FOR ALLOWANCE OF APPEAL

The above-named Plaintiff, F. K. Dent, considering himself aggrieved by the Interlocutory Order of this court made and entered in the above-entitled action on the 7th day of September, 1948, in favor of the Defendant, and against the Plaintiff, wherein it was ordered that the application of the Plaintiff for an Injunction Pendente Lite restraining and enjoining the Defendant from mining and extracting gold and other precious metals from the mining claims of Plaintiff described in the Complaint on file in the above entitled cause was denied, does hereby appeal from said order and the whole thereof to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified and set forth in the Assignment of Errors, which is filed herewith, and the said Plaintiff prays that this appeal be allowed and that a transcript of the record, proceedings and papers upon which the said order was made duly authenticated by the Clerk of the Court may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California.

Dated at Fairbanks, Alaska, this 29th day of September, 1948.

COLLINS & CLASBY,
By /s/ CHAS. J. CLASBY,
Attorneys for Plaintiff.

(Acknowledgement of Service.)

[Endorsed[: Filed Oct. 1, 1948. [62]

[Title of District Court and Cause]

ASSIGNMENT OF ERRORS

Comes now the Plaintiff above named and alleges that the Order of the above-entitled Court, entered in the above entitled cause on the 7th day of September, 1948, denying Plaintiff's application for an Injunction Pendante Lite, is erroneous, unjust to him, and files with his petition for an Allowance of Appeal the following assignment of error upon which he will rely:

I.

The Court erred in denying Plaintiff's application for the issuance of an interlocutory order restraining and enjoining Defendant, during the pendency of this action, from the mining and extraction of gold and other metals from the mining claims of Plaintiff described in the complaint of plaintiff on file in the above entitled cause.

Wherefor, Plaintiff prays that said Order be reversed and the cause remanded with the mandate to enter therein said Injunction Pendante Lite as applied for in the application of plaintiff.

COLLINS & CLASBY,

By /s/ CHAS. J. CLASBY,

Attorneys for Plaintiff.

(Acknowledgement of Service.)

[Endorsed]: Filed Oct. 1, 1948. [63]

[Title of District Court and Cause]

ORDER ALLOWING APPEAL AND FIXING
AMOUNT OF COST BOND

Now, on this 1st day of Oct., 1948, the same being one of the days of the General.....1948 Term of this Court, this cause came on regularly to be heard upon the Petition of the Plaintiff above named for the allowance of an appeal on behalf of said Plaintiff from the Interlocutory Order entered in this cause on the 7th day of September, 1948, denying Plaintiff's application for the issuance of an injunction pendente lite and for the fixing of the amount of the cost bond on said Appeal and the court being duly advised in the premises does hereby find that said order is one from which appeal can be taken and that the cost bond herein should be fixed at the sum of \$250.00.

Now Therefore, It Is Ordered That the Appeal of said Plaintiff from the Interlocutory order entered herein on the 7th day of September, 1948, denying the application of Plaintiff for the issuance of an injunction pendente lite be and the same is hereby allowed to the United States Circuit Court of Appeals for the Ninth Circuit, and that a certified copy of the transcript of record, proceedings, affidavits, orders and all other proceedings in this matter, upon which said Interlocutory Order appealed from is based, be transferred, duly authenticated, to the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California. [64]

It is further ordered that the amount of the Cost Bond herein be and the same is hereby fixed at the sum of Two Hundred Fifty Dollars (\$250.00).

Dated at Nome, Alaska, this 1st day of Oct., 1948.

/s/ JOHEPH W. KEHOE,
District Judge.

Presented by:

/s/ CHAS. J. CLASBY,
One of the Attorneys for
Plaintiff.

(Acknowledgement of Service.)

[Endorsed]: Filed Oct. 1, 1948. [65]

[Title of District Court and Cause]

COST BOND ON APPEAL

Know All Men by These Presents:

That we, F. K. Dent, as principal, and American Casualty Company of Reading, Pennsylvania, as surety, are hereby held and firmly bound unto the United States of America in the sum of Two Hundred Fifty Dollars, (\$250.00), lawful money of the United States to be paid for the use and benefit of the Defendant above named, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, as the case may be, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 4th day of Oct., 1948.

The condition of the above obligation is such that:

Whereas the above bounden Plaintiff has filed his petition for appeal and is about to appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from that certain Interlocutory Order denying the application of Plaintiff for the issuance of an injunction Pendente Lite, which order was entered and rendered in the above entitled Court and cause on the 7th day of September, 1948; and

Whereas said Plaintiff desires to appeal from said Interlocutory Order and the whole thereof, to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse said Interlocutory Order, and have given [66] to Defendant in said action, Notice of Appeal as required by law, and said Court having duly fixed the amount of the Cost Bond at Two Hundred Fifty Dollars (\$250.00);

Now Therefore, if the Plaintiff above named shall prosecute said appeal to effect and answer all costs that may be adjudged against him if he shall

fail to make his plea, then this obligation shall be void; otherwise to remain in full force and effect.

(Seal) /s/ F. K. DENT,
Principal
American Casualty Company of
Reading, Pennsylvania.

By /s/ R. H. McDONALD,
Surety, Atty.-in-fact.

Copy received this 13th day of October, 1948.

C. C. TANNER,
Attorney for Defendant.

Bond approved this 13th day of October, 1948.

/s/ JOSEPH W. KEHOE,
District Judge. [67]

Affidavit of R. H. McDonald, Attorney-in-Fact of
American Casualty Company of Reading, Penn-
sylvania.

State of Washington,
County of King—ss.

R. H. McDonald being just and duly sworn, deposes and says that he is the Attorney-in-fact for the American Casualty Company of Reading, Pennsylvania, and as such is authorized to and does make this affidavit on behalf of the said company and states that the said company has complied with the Provisions of Section 3089 of the compiled laws of Alaska and has complied with the laws of the United States and Alaska; That said company is duly authorized by law to act as Surety in the Territory of Alaska; and that affiant has been de-

signated and is authorized by said company to make this affidavit.

[Seal] American Casualty Company,
By /s/ R. H. McDONALD,
Attorney-in-fact.

State of Washington,
County of King—ss.

On this 4th day of October, 1948, before me personally came R. H. McDonald to me known and known to me to be the individual described in and who executed the foregoing instrument, and he acknowledged to me that he executed the same.

[Seal] /s/ E. PEARSON,
Notary Public in and for the State of Washington,
residing at Seattle, Wash.

My commission expires March 11, 1949.

[Endorsed]: Dated Oct. 13, 1948. [68]

[Title of District Court and Cause]

STIPULATION RE: PRINTING OF RECORD

It is hereby stipulated by and between the above named parties, Plaintiff and Defendant, through their respective Attorneys, that in printing the papers and records to be used on the hearing on appeal in the above entitled cause, for the consideration of the United States Circuit Court of Appeals for the Ninth Circuit, the title of the Court and Cause in full on all papers shall be omitted, except on the first page of said record and that there shall be inserted in place of said title on all

papers used as a part of said records the words "Title of Court and Cause." Also that all endorsements on said papers used as a part of said record shall be omitted except the Clerk's file marks and the admission of service.

Dated at Nome, Alaska, this 1st day of Oct., 1948.

COLLINS & CLASBY,

By /s/ CHAS J. CLASBY,

Attorneys for Plaintiff and
Appellant.

/s/ C. C. TANNER,

Attorney for Defendant and
Appellee.

[Endorsed]: Filed Oct. 1, 1948. [69]

[Title of District Court and Cause]

PRAECIPE FOR TRANSCRIPT OF RECORD
To: Norvin W. Lewis, Clerk of the above entitled
Court.

You will please prepare transcript of record in the above entitled cause, to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, sitting in San Francisco, California, upon the appeal heretofore perfected to said Court, and include therein the following papers and records, to-wit:

1. Complaint.
2. Application for Injunction Pendente Lite.
3. Affidavit in Support of Injunction Pendente Lite.

4. Order to Show Cause.
5. Answer.
6. Affidavit in Opposition to Injunction Pendente Lite.
7. Reply Affidavit, F. K. Dent.
8. Reply Affidavit, F. K. Dent.
9. Stipulation (re Setting hearing)
10. Second Affidavit in Opposition to Injunction Pendente Lite.
11. Opinion.
12. Order denying Injunction Pendente Lite.
13. Notice of Appeal.
14. Petition for Appeal.
15. Assignment of Errors.
16. Order Allowing Appeal and Fixing Cost Bond.
17. Cost Bond on Appeal.
18. Citation.
19. Stipulation on Printing of Record.
20. Praecipe.

This transcript is to be prepared as required by law and the rules and orders of this Court and the Circuit Court of Appeals for the Ninth Circuit, and is to be forwarded to said Court at San Francisco, California, so that it will be docketed therein on or before the 10th day of Nov., 1948. [70]

Dated at Fairbanks, Alaska, this 5th day of October, 1948.

COLLINS & CLASBY,
By CHAS. J. CLASBY,
Attorneys for Appellant.

(Acknowledgment of Service.)

[Endorsed]: Filed Oct. 13, 1948. [71]

CERTIFICATE OF CLERK

United States of America,
Territory of Alaska,
Second Division—ss.

I, Norvin W. Lewis, Clerk of the District Court for the Territory of Alaska, Second Division, do hereby certify that the foregoing Transcript on Appeal consisting of typewritten pages, from 1 to 73 both inclusive, is a true and exact transcript of the Complaint, Application for Injunction Pendente Lite, Affidavit in Support of Injunction Pendente Lite, Order to Show Cause, Answer with Exhibits 1, 2, 3 and 4 attached, Affidavit in Opposition to Injunction Pendente Lite with Exhibits 1, 2, 3 and 4, attached, Reply Affidavit of F. K. Dent, with copy of circular No. 1667, United States Department of the Interior, Bureau of Land Management and Minutes of Miners Meeting, Council, Alaska dated June 29, 1948, attached, Reply Affidavit, F. K. Dent, Stipulation (re Setting Hearing), Second Affidavit in Opposition to Injunction Pendente Lite, Opinion, Order Denying Injunction Pendente Lite, Notice of Appeal, Petition for Appeal, Assignment of Errors, Order Allowing Appeal and Fixing Cost Bond, Cost Bond on Appeal, Stipulation re Printing of Record and Praecipe in the Case of F. K. Dent, Plaintiff, vs. Alaska Placers Company, a Domestic Corporation, Defendant, No. 3781 Civil, this Court, and of the whole thereof, as appears from the Records and Files in my Office at Nome, Alaska, and I further certify that the Orig-

inal Citation on Appeal Is Annexed to This Transcript.

Cost of Transcript \$29.20 paid by Chas. J. Clasby of Attorneys for plaintiff F. K. Dent.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Court this 19th day of October, 1948.

[Seal) /s/ NORVIN W. LEWIS,
Clerk, U. S. District Court, Territory of Alaska,
Second Division. [72]

[Title of District Court and Cause.]

CITATION OF APPEAL

To: The Defendant above named, Alaska Placer Company, a Domestic Corporation, and to C. C. Tanner, its Attorney.

You are hereby cited to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, to be holden in the City of San Francisco, State of California, within forty (40) days from the date of this Citation, pursuant to an order allowing an appeal, made and entered in the above entitled cause on this day, in which the above named Plaintiff, F. K. Dent, Plaintiff and Appellant, and the Alaska Placer Company, a Domestic Corporation, Defendant and Appellee, to show cause, if any there be, why the Order made and entered in said cause on the 7th day of September, 1948, denying the application of Plaintiff for the entry therein of an Injunction Pendente Lite to restrain the Defendant from the mining and ex-

tracting of gold and other metals from the mining claims of the Plaintiff described in the Complaint therein on file, should not be set aside and reversed, and why speedy justice should not be done to said Plaintiff and Appellant above named in that behalf.

Witness the Honorable Fred M. Vinson, Chief Justice of the Supreme Court of the United States of America, on this 13th day of Oct., 1948.

/s/ (Illegible.)

District Judge.

(Acknowledgment of Service.)

[Endorsed]: Filed Oct. 13, 1948. [73]

[Endorsed]: No. 12069. United States Court of Appeals for the Ninth Circuit. F. K. Dent, Appellant, vs. Alaska Placer Company, Appellee. Transcript of Record. Appeal from the District Court for the Territory of Alaska, Second Division.

Filed October 22, 1948.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 12069

F. K. DENT,

Appellant,

vs.

ALASKA PLACER COMPANY, a Domestic Corporation,

Appellee.

APPELLANT'S STATEMENT OF POINT TO
BE RELIED ON AND DESIGNATION OF
PARTS OF RECORD TO BE PRINTED

Comes now the appellant, F. K. Dent, and submits herewith the statement of the point on which he intends to rely on the appeal and designates the parts of the record which he thinks necessary for the consideration thereof, as follows:

I.

The point upon which appellant intends to rely on appeal is:

The district court erred in denying appellant's application for the issuance of an interlocutory order restraining and enjoining appellee, during the pendency of this action, from the mining and extraction of gold and other metals from the mining claims of appellant described in the complaint of appellant on file in the above-entitled cause.

II.

The parts of the record which appellant thinks necessary for the consideration of this appeal are as follows and the following portions of the record are hereby designated by the appellant as being the only parts which need be printed for the purposes of this appeal:

Print the entire record, excluding Exhibits 1, 2, 3 and 4 attached to appellee's affidavit in opposition to the injunction pendente lite. In lieu of said exhibits attach to said affidavit a memorandum stating that the exhibits referred to in said affidavit are identical with those attached to the answer and printed as a part of said answer.

Dated this 17th day of November, 1948.

/s/ CHARLES J. CLASBY,

/s/ SOUTHALL R. PFUND,

Attorneys for Appellant.

Of Counsel:

/s/ COLLINS & CLASBY

/s/ PILLSBURY, MADISON &
SUTRO,

/s/ ALLAN R. MOLTZEN.

[Endorsed]: Filed Nov. 17, 1948. Paul P. O'Brien, Clerk.

[Title of U. S. Courts of Appeals and Cause]

STIPULATION RE PRINTING EXHIBITS
IN RECORD

Whereas, attached to the Answer of Appellee on file in the above case are several exhibits; and

Whereas, attached to the Affidavit in opposition to Injunction Pendente Lite filed by Appellee in the above case are identical copies of the same exhibits attached to the answer; and

Whereas, it is the desire of the parties to provide for the printing only one set of said exhibits for Transcript of the record on appeal, Now, Therefore,

It is hereby stipulated and agreed by and between the Appellant and Appellee, through their respective attorneys, that in printing the record on appeal in the above noted cause now pending before the United Circuit Court of Appeals for the Ninth Circuit only the exhibits attached to the answer be printed and that in lieu of printing said exhibits again with reference to the Affidavit in opposition to Injunction Pendente Lite that there be attached to said affidavit a memorandum by the Clerk of the United States Circuit of Appeals for the Ninth Circuit stating that the Exhibits referred to in said affidavit are identical with those attached to the Answer and by reference made a part of the affidavit.

Dated this 25th day of October, 1948.

SOUTHALL R. PFUND,
COLLINS & CLASBY,

By /s/ CHAS. J. CLASBY,
Attorneys for Appellant.

/s/ C. C. TANNER,
Attorney for Appellee.

[Endorsed]: Filed November 18, 1948. Paul P. O'Brien, Clerk.

